

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE E.PADMANABHAN
AND
THE HONOURABLE MR. JUSTICE M.THANIKACHALAM

A.S. NO. 681 OF 2001
AND A.S.NOS. 684, 716 TO 721, 729 TO 734, 787 TO 792, 868 TO 872,
889 TO 894, 947 TO 952 AND 957 TO 961 OF 2001

A.S. NOS. 114, 131, 618 TO 625, 693 TO 709, 771 TO 779, 816 TO 824,
837 TO 846, 849 TO 856, 877 TO 884 OF 2001

A.S. NOS. 1 TO 8, 11, 21, 22, 238 TO 242, 289 TO 296, 298 TO 304
320 TO 325, 330 TO 333 AND 387 TO 389 OF 2002

A.S. NOS. 122, 123, 205 TO 212, 313 TO 323, 329 TO 338, 471 TO 481, 607
TO 617, 740 TO 750, 804 TO 812 AND 827 TO 836 OF 2001

A.S. NOS. 899 TO 901 OF 2001

A.S. NOS. 478 TO 480, 530 TO 532 & 457 TO 465 OF 2002

A.S. NOS. 143 TO 158 OF 2003

AND

C.M.P. NOS. 2104, 2112, 2113, 2121, 3883 TO 3890, 5211 TO 5221, 5670
TO 5679, 7881 TO 7890, 9101 TO 9111, 9189 TO 9196, 11525 TO 11528,
11694 TO 11710, 12051 TO 12056, 12277 TO 12282, 12552 TO 12559,
12260 TO 12262, 12979 TO 12986, 13137 TO 13142, 13233 TO 13241,
13282 TO 13290, 13329 TO 13338, 13468 TO 13477, 13628 TO 13635,
13924 TO 13928, 14350 TO 14357, 14515 TO 14520, 16474 TO 16479,
16953 TO 16957 OF 2001

C.M.P. NOS. 286, 309, 424, 285, 908, 909, 50, 51, 52, 54, 274 TO 278,
282 TO 284, 288 TO 290, 305 TO 308, 475, 476, 493 TO 496, 559 TO
562, 905 TO 907, 4545, 4546 OF 2002

C.M.P. NOS. 2675 TO 2690 OF 2003

A.S. NO. 471 OF 2001

The Special Tahsildar (LA)
Krishna Water Supply Project
Unit - II, Tiruvallur .. Appellant

-Vs-

1. W. Premkumar
2. The Executive Engineer
Public Works Department
Krishna Water Supply Project
Section - 2, Tiruvallur. .. Respondents

A.S. No.471 of 2001 preferred against the judgment and award of the learned Subordinate Judge, Tiruvallur, made in LAOP No.103 of 1996 dated 28.04.2000, as stated therein.

!For Appellant : Mr. R.Ashokan, AGP

^For Respondents : Mr. G. Karthikeyan, for R1 in all AS

No appearance for R2

:COMMON JUDGMENT

E. PADMANABHAN, J.

1. The first batch of appeals pertaining to Sevvapet Village have been preferred against LAOP Nos. 1006 to 1047 of 1994, 21/95, 34/95 and 35/95 by the land acquisition officer challenging the enhancement of market value fixed by the learned Subordinate Judge of Tiruvallur in the common judgment and decree dated 28.4.20 00.

2. The second batch of appeals pertaining to Thirur Village have been preferred against LAOP Nos. 351/93, 241/93, 243/93, 244/93, 252/93, 301 to 334/93, 345 to 350/93, 352 to 377/93 by the land acquisition officer challenging the enhancement of market value fixed by the learned Subordinate Judge of Tiruvallur in the common judgment and decree dated 28.4.2000.

3. The third batch of appeals pertaining to Koppur Village have been preferred against LAOP Nos. 199/94, 171 to 198/94, 200 to 212/94, 22/95 and 32/95 by the land acquisition officer challenging the enhancement of market value fixed by the learned Subordinate Judge of Tiruvallur in the common judgment and decree dated 23.4.2001.

4. The fourth batch of appeals pertaining to Thozhur Village have been preferred against LAOP Nos. 140/96, 16 to 20/95, 27 to 31/95, 37 to 39/96, 40 to 43/96, 72 to 139/96 and 155/96 by the land acquisition officer challenging the enhancement of market value fixed by the learned Subordinate Judge of Tiruvallur in the common judgment and decree dated 28.04.2000.

5. With the consent of either side, the above batch of appeals were consolidated and taken up for final disposal. Heard Mr.R.Ashokan, learned Additional Government Pleader appearing for the appellant in all the appeals and Mr.G.Karthikeyan, learned counsel appearing for the respondents in all the appeals.

6. A large track of land in Tiruvallur Taluk, Tiruvallur District formerly of Chengalpet District running kilometers together North-South East and North was acquired for the purpose of formation of link canal to Chembarambakkam Tank

for the Krishna Water Supply Project to provide drinking water to Chennai city.

7. The lands running to several kilometers were acquired in the villages Sevvapet, Tirur, Koppur and Thozhur in the same Taluk. Contiguous lands of the required width of 20 meters for the formation of link canal to Chembarambakkam Tank to store the Krishna Water were acquired.

8. In respect of Sevvapet, lands measuring 5.61.5 Hectares, registered in the name of 45 owners, who are respondents in these batch of appeals were notified under Section 4 (1) of The Land Acquisition Act on 29.1.91 in the Tamil Nadu Gazette, in two tamil dailies on 3.1.91 and the substance of the Notification was published in the locality on 29.1.91. Thereafter, Section 6 Declaration was published on 27.1.92. In Sevvapet Village, an extent of 1.88.0 Hectares of wet land, 3.01 .0 Hectares of dry land and 0.72.5 Hectares of Manavari lands were acquired. In respect of individual owner, as seen from the details of the lands acquired, minimum extent of 0.01.5 / 0.03.5 / 0.05.0 / 0.03 .0 / 0.07.5 / 0.23.0 / 0.16.0 / 0.15.0 / 0.29.0 / 0.24.0 Hectares of different extents in respect of each survey field was the subject matter of acquisition, in all aggregating to 5.61.5 Hectares.

9. As on the date of Section 4 (1) Notification published on 29.1.91, which is the crucial date for fixing the market value, the land acquisition officer considered sixteen sales of agricultural lands. The land acquisition officer discarded the house-site sales. Ultimately by taking into consideration of a sale deed dated 8.1.90, the land acquisition officer fixed the market value of the acquired land at Rs.3 00/= per cent, for irrigated lands and for lands which are lying waste at Rs.200/= per cent. Apart from that the land acquisition officer awarded compensation in respect of wells, thatched sheds and buildings as well. The land acquisition officer fixed the various sums in respect of each of the land owners depending upon the extent acquired with interest and solatium by award bearing No.1/93-94 dated 13.5.93.

10. The respondents/land owners protested the fixation of compensation as very low and sought for a reference under Section 18 of The Land Acquisition Act and the above batch of 45 LAOPs pertaining to Sevvapet village were referred to the file of the learned Subordinate Judge of Tiruvallur.

11. Before the learned Subordinate Judge, the land owners/interested persons marked Exs.P-1 to P-17 and examined three witnesses on their side, while the former Land Acquisition Officer, who has since retired has been examined as R.W.1. The learned Subordinate Judge for all the lands without distinction or difference as to wet land or dry land or manavari land or house-site or its location, fixed the market value of the acquired land at Rs.4,000/= per cent in all the 45 LAOPs pertaining to Sevvapet Village by a common judgment dated 28.4.2000. As the increase of market value fixed by the learned Subordinate Judge is 20 times in respect of dry lands and 13 times in respect of wet lands, the present appeals have been preferred by the land acquisition officer.

12. In respect of Thirur, lands measuring 7.84.05 Hectares both dry and wet lands, registered in the name of 71 owners, who are respondents in these batch of appeals were notified under Section 4 (1) of The Land Acquisition Act on two different dates, namely, on 31.8.90 and 1 7.4.90. Thereafter, Section 6 Declaration was published on 19.9.91.

13. As on the date of Section 4 (1) Notification published on 31.8.90 / 17.4.90, which is the crucial date for fixing the market value, the land

acquisition officer considered 21 sales of agricultural lands. The land acquisition officer fixed the market value of the acquired land, for Nanja lands at Rs.200/= per cent; for Punja lands at Rs.14 3/= per cent. The land acquisition officer fixed the various sums in respect of each of the land owners depending upon the extent acquired with interest and solatium.

14. The respondents/land owners raised protest and sought for a reference under Section 18 of The Land Acquisition Act and the above batch of 71 LAOPs pertaining to Thirur village were referred to the file of the learned Subordinate Judge of Tiruvallur.

15. Before the learned Subordinate Judge, the land owners/interested persons marked Exs.P-1 to P-21 and examined two witnesses on their side, while the former Land Acquisition Officer, who has since retired has been examined as R.W.1. The learned Subordinate Judge for all the lands without distinction or difference such as wet land or dry land or manavari land or house-site, fixed the market value of the acquired land at Rs.4,600/= per cent in all the 71 LAOPs pertaining to Thirur Village by a common judgment dated 23.12.2001. As the increase of market value fixed by the learned Subordinate Judge is more than 23 times in respect of Nanja lands and 32 times in respect of Punja lands, the present appeals have been preferred by the land acquisition officer.

16. In respect of Koppur, lands measuring 4.09.5 Hectares of wet lands, 8.68.5 Hectares of dry lands and 0.68.5 Hectares of manavari lands, registered in the name of 44 owners, who are respondents in these batch of appeals were notified under Section 4 (1) of The Land Acquisition Act on 3.12.90.

Thereafter, Section 6 Declaration was published on 29.11.91.

17. As on the date of Section 4 (1) Notification published on 3.12.90 , which is the crucial date for fixing the market value, the land acquisition officer considered sales of agricultural lands. The land acquisition officer fixed the market value of the acquired land, for wet lands at Rs.250/= per cent and for dry and manavari lands at Rs.80/= per cent. The land acquisition officer fixed the various sums as compensation in respect of mango trees and various other buildings by award bearing No.6/92-93 dated 31.10.92.

18. The respondents/land owners raised protest and sought for a reference under Section 18 of The Land Acquisition Act and the above batch of 44 LAOPs pertaining to Koppur village were referred to the file of the learned Subordinate Judge of Tiruvallur.

19. Before the learned Subordinate Judge, the land owners/interested persons marked Exs.P-1 to P-31 and examined two witnesses on their side, while the former Land Acquisition Officer, who has since retired has been examined as R.W.1. The learned Subordinate Judge fixed the market value of wet land at Rs.3,300/= per cent and for dry land at Rs.2,200/= per cent in all the 44 LAOPs pertaining to Koppur Village by a common judgment dated 23.04.2001. As the increase of market value fixed by the learned Subordinate Judge is more than 13 times in respect of wet lands and 27 times in respect of dry lands, the present appeals have been preferred by the land acquisition officer.

20. In respect of Thozhur, lands measuring 10.93.0 Hectares, registered in the name of 87 owners, who are respondents in these batch of appeals, were notified under Section 4 (1) of The Land Acquisition Act on 13.12.90, which was published on 28.1.91/29.1.91. Thereafter, Section 6 Declaration was published on 31.7.91.

21. As on the date of Section 4 (1) Notification published on 28.1.91

/29.1.91, which is the crucial date for fixing the market value, the land acquisition officer considered 20 sales of agricultural lands. The land acquisition officer fixed the market value of the acquired land, for Nanja lands at Rs.160/= per cent; for Nanja-Punja lands with irrigation facility at Rs.200/= per cent and for Nanja lands without irrigation facility at Rs.150/= per cent by award bearing No.2/93-94 dated 2.7.93.

22. The respondents/land owners raised protest and sought for a reference under Section 18 of The Land Acquisition Act and the above batch of 87 LAOPs pertaining to Thozhur village were referred to the file of the learned Subordinate Judge of Tiruvallur.

23. Before the learned Subordinate Judge, the land owners/interested persons marked Exs.P-1 to P-20 and examined two witnesses on their side, while the former Land Acquisition Officer, who has since retired has been examined as R.W.1. The learned Subordinate Judge, for all the lands at Thozhur without distinction or difference such as wet land or dry land or manavari land or house-site, fixed the market value of the acquired land at Rs.500/= per cent in all the 87 LAOPs pertaining to Thozhur Village by a common judgment dated 28.04.2000. As against the increase of market value fixed by the learned Subordinate Judge in respect of Nanja and Punja lands, the present appeals have been preferred by the land acquisition officer.

24. In all the above batch of appeals, which relates to acquisition of land in four different villages, namely, Sevvapet, Thirur, Koppur and Thozhur it is contended by the learned Additional Government Pleader appearing for the appellant in all the appeals that there is totally no reason or rhyme to increase the market value of the acquired lands to a phenomenal price than what has been as fixed by the land acquisition officer. It is contended that the fixation of uniform market value for the lands lying to a length of several Kms., uniformly is uncalled for nor there is any basis. While pointing out that excepting the three houses, all other lot of lands acquired were being used as agricultural lands or lying fallow and, therefore, the market value has to be fixed as agricultural lands and not house sites. While pointing out that even as early as 1980-81 certain layouts have been approved by the competent authority under The Town Planning Act, but excepting very few and stray sales of one or two plots in the layout, all other lands are either lying fallow or under cultivation and, hence, they are no longer approved layouts in view of the passage of time and, therefore, the learned Subordinate Judge ought not to have treated the lands as house sites though it may be a potential house site and it should have been evaluated as agricultural lands on the basis of material documents produced by the land acquisition officer. It is also contended that various documents produced by the persons interested are in respect of small plots measuring 3 or 4 or 5 cents of land, which is a small piece and they are for different consideration where there is substantial disparity and, therefore the same cannot form the basis for fixation of market value. The documents were by an enterprising promoter as a power of attorney agent of the land owners and there had been some transactions, but no houses have come up. It is also pointed out that nearness to the railway station or bus stand or railway route or bus route or residential localities, which are already developed vis-à-vis distance to other plots lying far off has not been taken into consideration and fixing of uniform market value is illegal and cannot be sustained.

25. Per contra, Mr.Karthikeyan, learned counsel appearing for the respondents while relying upon exhibits Exs.P-1 to P-17 and the evidence of the witnesses in the respective LAOPs and the admissions of R.W.1 , the former land acquisition officer contends that the fixation of market value in the respective batch of appeals pertaining to Sevvapet, Thirur, Koppur and Thozhur villages cannot be held to be excessive or on the higher side to the existing market value in the locality and, therefore, no interference is called for.

It is also pointed out that the lands, which were conveyed under the respective exhibits, though around a ground, (i.e.) 2400 Sft. or less than 2400 Sft., the market value during the year 1988, 1989, 1990 and 1991 ranged from Rs.4 ,000/= to Rs.5,000/= per cent, which reflect the market value of the acquired land on the date of publication of Section 4 (1) Notification. The sale deeds produced as exhibits in the respective LAOPs, relates to sale of 2,400 Sft. or less than 2400 Sft., which are in respect of small plots in Sevvapet, Tirur, Koppur and Thozhur villages, which it is claimed form part of approved layouts and, therefore, the lands acquired should be considered as house sites alone though they may be lying over as waste land or even though substantial extent of lands being cultivated along with the adjacent lands and the market value fixed at Rs.4,000/= and thereabout cannot be held to be excessive and there is every justification for fixing the market value uniformly in respect of each village.

26. In respect of the four villages, the date of Section 4 (1) Notification and the market value of the land as fixed by the Land Acquisition Officer as well as the learned Subordinate Judge are set out hereunder :-

S. No.

Description

Name of the
Village

Sevvapet

Thirur
Koppur
Thozhur
1

Date of 4 (1)

Notification

02.01.1991
31.08.1990
&
17.04.1990

03.12.1990
13.12.1990

2

Market value

fixed by the

LAO

1. Irrigated Dry Lands - Rs.300/= per cent.

2. Wet Land - Rs.200/= per cent.

1. Nanja Lands - Rs.200/= per cent.

2. Punja Lands - Rs.143/= per cent.

1. Wet Lands - Rs.250/= per cent.

2. Dry Lands - Rs.80/= per cent.

1. Nanja-Punja Lands - Rs.200/= per cent.

2. Punja Lands - Rs.160/= per cent.

3. Nanja Lands without irrigation facility - Rs.150/= per cent.

3

Market value

fixed by the

Reference Court

Rs.4,000/= per cent.

Rs.4,600/= per cent.

1. Wet Lands - Rs.3,300/= per cent.

2. Dry Lands - Rs.2,200/= per cent.

Rs.5000/= per cent.

4

Rate of increase between LAO and Court

Dry lands -13.33 times

Wet land - 20 times

Nanja lands - 23 times

Punja lands - 31.5 times

Wet lands - 17.2 times

Dry lands - 27.5 times

Nanja lands - 2.5 times

Punja lands - 3 times

Nanja lands without irrigation facility - 3.25 times

27. The points that arise for consideration in these batch of appeals are :-

a) What is the market value of the acquired land as on the date of Section 4

(1) Notification (i.e.) on 02.01.1991 in Sevvapet Village ?

b) What is the market value of the acquired land as on the date of Section 4

(1) Notification (i.e.) on 31.08.1990 & 17.4.1990 in Thirur Village ?

c) What is the market value of the acquired land as on the date of Section 4

(1) Notification (i.e.) on 03.12.1990 in Koppur Village ?

d) What is the market value of the acquired land as on the date of Section 4

(1) Notification (i.e.) on 13.12.1990 in Thozhur Village ?

e) Whether the fixation of uniform market value for the acquired lands in each village by the court below could be countenanced in law ?

f) To what relief, if any, the appellant is entitled to in each batch of appeals ?

28. As already pointed out, common arguments were advanced. The appellant/land acquisition officer in all the appeals challenge the fixation of market value in respect of each village as on the respective date of Section 4 (1) Notification. The award of compensation towards buildings, trees, wells, huts, etc., have not been challenged at all by the land acquisition officer/appellant in these batch of appeals and also there is no cross objections and, hence, the said fixation need not be examined. The only contest being in respect of market value of the acquired lands. The respondents/land owners in all these batch of appeals have not preferred any cross objections, though they have been served in the appeal long before. Hence, the land owners are obviously satisfied with the market value as fixed by the Court below.

29. It is also admitted that the lands acquired in a particular village is along the link channel, which runs North-South or with slight deviation North-West to South-East. The lands of the width of 20 meters were acquired so as to enable the formation of link channel throughout and the channel size is one and the same excepting where there is a small additional construction. Most of the documents filed in these batch of LAOPs on behalf of land owners are common, in that substantial number of documents from Sevvapet Village, which is close to railway line has been marked to show the market value of the acquired land, while few documents from other two villages have been marked. But all the sale deeds are for small plots of less than 2000 Sft. or thereabout.

30. The illegalities pointed out or contentions advanced by the learned Additional Government Pleader in all these appeals are identical and the contentions advanced by Mr.Karthikeyan, learned counsel for the respondents is also the same. Excepting in one of the villages, in other villages the court below has fixed the market value of the acquired land in the same range for the entire village irrespective of the location or distance or nature of sale

or advantages the acquired land commands or the potentialities or demand for the land and this according to the learned Additional Government Pleader is an illegality and sufficient to allow the appeals.

31. It has to be pointed out that the appeals were remanded on the earlier occasion as documents were not marked through the parties to the document. Excepting for a small plots close to the developed colonies, all other acquired plots are far away from the habitation in the respective villages or railway station or bus route or bazaar or schools, etc., as seen from a topo sketch produced at the time of hearing of these appeals. Most of the plots are far off from the railway station or Madras-Tiruvallur road via Aavadi and they are away from other places of importance like habitation, schools or railway stations or bus terminal or hospitals or bazaar or temples. Though it is claimed that number of colonies have sprung into existence before Section 4 (1) Notification, they are not adjacent to the acquired land but slightly in a different area or locality. Excepting houses in one or two of the villages such as new colonies, all other lands are practically either being cultivated or lying fallow, though the layouts have been approved during the year 1980-81 as has been elicited from the land acquisition officer during cross-examination.

32. The evidence of R.W.1 in all the LAOPs is identical in every respect. It is useful to refer to the evidence of R.W.1 at least in one of the batch of appeals and it need not be repeated for other batch of appeals. R.W.1, the land acquisition officer, who has since retired, had deposed about his conducting the award enquiry and passing the award as well as the extent of lands notified in each village and in respect of which award came to be passed by him. It is his deposition that the acquired land in Sevvapet Village is located South of Madras-Tiruvallur Road via Aavadi and so also on either side by the Madras-Tiruvallur Railway track; that he has seen the raising of crops like groundnut, paddy, jasmine plants on the acquired lands; that most of the lands have been laid out and divided into plots; that out of the total extent acquired, there were three houses, which he had evaluated and awarded compensation for the structures; that he has taken into consideration of sixteen different sales in respect of agricultural lands and under a deed of sale in respect of agricultural lands dated 26.11.1989 it has been sold at the rate of Rs.300/= per cent as on 26.11.1989; that what was conveyed under the sale deed dated 26.11.89 are not only nanja lands, but also punja lands fitted with wells with electric motor pumpset; that large lands have been sold at Rs.200/= per cent; that though in respect of acquired lands and surrounding lands layouts were formed and approved, the lands are lying fallow or being cultivated; 3/4th of the layout lands are under wet cultivation without water source; that the lands, it is admitted, lie on either side of the East-West Highway, so also on either side of the railway track; that there existed three houses few huts on the acquired lands, but nobody was occupying it; that acquired lands at Sevvapet starts at Thozhur and ends at Thirur; that near the acquired land the Tamil Nadu Housing Board has acquired considerable extent of lands and have put the neighbourhood scheme; that Srimathi Nagar and Ganga Nagar are the new colonies located close by; that the Tamil Nadu Housing Board Neighbourhood Scheme houses are located on the southern side of the railway line; that there is a High School at Sevvapet; that the lands in Sevvapet, Thirur, Koppur and Thozhur are lying within 3 Kms. from Sevvapet; that the lands at Sevvapet is comparably more potential and convenient; that the

acquired lands are fit for putting up construction; that the lands acquired by Subramani Naidu was a brick field and it was lying low; that a sum of Rs.1,000/= has to be spent to level the lands; that 90% of the lands have been divided into plots and layout has been sanctioned and less than 10% has been dealt with or disposed of; that it is not correct to state that 90% of the plots have been sold within three years, but only 10% sale deeds have been registered; that the market value of the land was not arrived at on the basis of the sale of house plots, but it was arrived at on the basis of sales of agricultural and other lands; that the seventeen sale deeds pertaining to the sale transactions before Section 4 (1) Notification were produced by the claimants/person interested and it works out to Rs.4,000/= to Rs/7,000/= per cent and that the claimants are not entitled to enhanced compensation.

33. Identical is the deposition of the very same land acquisition officer in all the other LAOPs excepting a small difference as to the trees in various mango thopes, valuation of building, location of the lands, distance between the lands and the habitation or railway line and that the market value of the acquired land has been arrived at on the basis of a data sale in respect of agricultural lands.

34. In all the four batches, P.W.s 2 and 3 have been examined, who are all real estate agents who are the promoters of various layouts and from whose deposition it is noticed that the guideline value is Rs.1 0/= per Sft.; that he has already arranged for sale of 300 plots and for improving the land, the land owner has to spend around Rs.30,000/= per plot. P.W.3 is one Devaraj, who is a purchaser in respect of sale deed dated 24.10.90 marked as Ex.P-2 and it works out to Rs.4,000 /=- per cent. The evidence of P.W.1 is also practically common.

35. In later batch of LAOPs, the award passed in the two earlier batch of LAOPs have been exhibited, but all the award of LAOPs are the subject matter of present appeals and, therefore, it may not be appropriate to rely upon those awards as a factor.

36. The various exhibits filed by the claimants in all the LAOPs relates to small plots of less than 2,000 or 2,400 Sft., and most of them are much prior to Section 4 (1) Notification and those sales relates to few sales in all the villages and there are close to existing habitation or nearby railway station or bus terminal or next to the railway track or bus route and more than 90% of the plots are far away from the railway line or bus route or housing colonies and they do not command direct bus facility or other facilities to attract investors. To reach most of the plots one has to walk a long distance, why few kilometers from the road or railway line or railway station or bus terminus as the case may be. Most of the lands are either under cultivation or lying fallow without any cultivation for years together though it is claimed that they are all lands, which have been laid out by various real estate agents or owners as the case may be. There is no evidence to show that the entire extent of acquired land runs through a thick habitation, but only a portion of the acquired land is adjacent to the villages, if at all, close to the habitation. In fact, on the objection of persons, who are likely to be affected by the acquisition, the very route of the link canal was altered to avoid acquisition of houses. Further, as it is an open channel, construction of open channel near to the existing colonies or houses will not be hygienic as there will be lot of pollution and it deserved to be avoided. Hence, the channel alignment was altered after considering the objections. All these

aspects have to be taken into consideration while fixing the market value of the acquired land in all the above villages.

37. The burden of proof lies on the claimants who claim the particular sum as the market value by producing documents. This is the legal position as laid down by the Supreme Court in MANIPUR TEA COMPANY VS. COLLECTOR OF HEILKANDI reported in 1997 (9) SCC 673. It has also been held that sales statistics cannot ipso facto form a basis to determine the compensation. Though it may not be necessary to examine the parties to such sale deeds, the Court has to consider in the proper perspective the entire evidence adduced and determine the compensation. So also the sales statistics cannot ipso facto form the basis to determine the compensation.

38. In SHAJI KURIAKOSE & ANOTHER VS. INDIAN OIL CORPORATION reported in 2001 (7) SCC 650, the Apex Court laid down the methods of valuation of land for determining the compensation payable under Section 23. In that respect, the Apex Court held thus :-

"3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors, which are required to be fulfilled, and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

39. In SPECIAL DEPUTY COLLECTOR VS. KURRA SAMBASIVA RAO reported in 1997 (6) SCC 41, the Supreme Court laid down that the court has to determine the market value on an objective assessment of the conditions prevailing in the open market, the nature of the user of the land to which the land was put on the date of the notification, the situation of the land, the income derived therefrom and all other relevant attending circumstances. Such determination, it has been further held, should be just, adequate and reasonable. In other words, it must be just equivalent to what the land is capable of fetching in the open market from a willing seller and prudent buyer and the court has to

sit in the arm chair of a bona fide, willing seller and prudent purchaser in the open market and seek an answer to the question where under the conditions prevailing in the market the purchaser would offer the same market value as the court has proposed.

40. It is also the equally well settled legal position that the claimants stand in the position of plaintiffs and the burden is on them to prove by adducing cogent and acceptable evidence that the lands are capable of fetching higher market value than what is determined by the land acquisition officer, which is only an offer. The burden to prove that the amount awarded by the land acquisition officer is not adequate is always on the claimant. Such burden could be discharged by adducing relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the land acquisition officer. The very object of reference under Section 18 is to bring on record the principles, which the land under acquisition was capable of fetching in the open market as on date of the notification.

41. The paramount duty of the courts of facts is to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof, in the correct perspective, to arrive at adequate and reasonable market value. The circumstances and the attending facts in a given case would furnish the guidance to arrive at the market value of the acquired lands. It is very much relevant to consider the neighbourhood lands as are possessed of similar potentiality or other advantageous features or any special circumstances available in each case.

42. A fair and reasonable market value or adequate value always depends upon the evidence adduced, circumstantial evidence and probabilities arising in each case. The guidance would be where a hypothetical willing vendor would offer the lands and the willing purchaser under normal circumstances would be willing to pay as a prudent mind under normal market conditions that prevails in the open market in the locality.

43. It is equally well settled that the best evidence of the value of property or the sale transaction in respect of acquired land to which the claimant is a party, the time at which the property was sold, the purpose for which it is sold, the nature of the consideration and the manner in which the transaction came to be brought out.

44. In SPECIAL DEPUTY COLLECTOR VS. KURRA SAMBASIVA RAO, reported in 1997 (6) SCC 41, the Apex Court further laid down thus:-

"11. It would thus be settled law that the Court is enjoined to determine the market value on an objective assessment of the conditions prevailing in the open market, the nature of the user of the land to which the land was put on the date of the notification, the situation of the land, the income derived therefrom and all other relevant attending circumstances. The market value so determined should be just, adequate and reasonable. In other words, it must be just equivalent to what the land is capable of fetching in the open market from a willing and prudent buyer. Therefore, the Court is required to sit in the armchair of a bona fide willing and prudent purchaser in the open market and seek an answer to the question whether in the conditions prevailing in the market he would offer the same market value as the Court has proposed."

45. It has also been repeatedly held that court shall not indulge in feats of imagination, but it has to sit in the arm chair of a prudent and willing

purchaser under the normal conditions of the market value and seek answer to the question whether such a purchaser would be willing to offer the amount proposed by the court after taking into consideration of the features of the land existing as on the date of the notification.

46. The claimants have to prove and demonstrate that the compensation awarded by the Collector is not adequate and that it does not reflect the true market value of the land as on the date of Section 4(1) Notification by adducing evidence on the relevant date as to what was the market value of the land in question. The above pronouncements have been relied upon by the learned counsel for the appellant.

47. Per contra, Mr. Karthikeyan, learned counsel appearing for the respondents in all the appeals contended that when the lands which are potential, the Courts will not be justified in ignoring this factor. In that respect, the learned counsel relied upon the pronouncement of the Apex Court in *HASANALI WALIMCHAND (DEAD) BY LRS. VS. STATE OF MAHARASHTRA* reported in 1998 (2) SCC 388 where the Supreme Court held that when an acquired land has future potential on account of its location, as the Chennai Metropolitan City is developing, along the railway line, the reference court has to take into consideration of the potentialities of the acquired land and any failure in this respect vitiates the judgment.

48. The learned counsel for the respondents also relied upon the pronouncement in *LAND ACQUISITION OFFICER REVENUE DIVISIONAL OFFICER, CHITTOR VS. L. KAMALAMMA (SMT) DEAD BY LRS & OTHERS* reported in 1998 (2) SCC 385, where the Apex Court held thus :-

"6. ... Further when no sales of comparable land were available where large chunks of lands had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed.

7. The argument advanced by Shri Nageswara Rao that the classification by the Land Acquisition Officer was in order and ought not to have been interfered with by reference court or the High Court does not appeal to us. When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."

49. The learned counsel for the respondents also relied upon the Division Bench judgment of this Court in *SPECIAL TAHSILDAR, LAND ACQUISITION, MASTER PLAN COMPLEX, VIRUDHUNAGAR VS. G. RAJENDRA BOSE* reported in 1995 (2) LW 99,

wherein the Division Bench held that all potentialities of the land acquired have to be taken into account as part of the value of the land, more particularly, all advantages that the lands possess, present or future in the hands of the owner may reasonably be taken into consideration while fixing the compensation to be awarded. The above pronouncements are being pressed into service by the learned counsel for the respondents in all these appeals.

50. In the light of the above pronouncements, in the light of the oral as well as documentary evidence let in in the separate batches, the location of the land, the distance or nearness or potentialities, market conditions in the area, fast urbanization, nearness to railway line, served by local electric trains, soil condition, similar advantageous features, relative value of the lands in the neighbourhood, distance from the bus route or railway line, bus stop or railway station, already existing buildings, factories, existing colonies in the locality or other advantages, which are available at a distance from the acquired land, we have to fix the market value of the acquired lands.

51. On a consideration of the admissions of R.W.1 in all the cases, the lands cannot be taken or treated as pure and simple agricultural lands, but they are potential house sites, in that all of them have been divided into plots, layouts have been approved, but sales of the lands are only 5 to 10% of the total plots in each layout. That apart, these layouts are under actual cultivation or were lying fallow without any improvement for more than a decade. It is true as deposed by the real estate agent, P.W.2 that the lands acquired are potential house sites. But on that score, the land owners cannot sustain a tall claim of several thousands of rupees per cent. Small plots of land when sold may attract many intending purchasers, but when large extent of lands is offered, the same will not attract many purchasers. The lands in each village covered by separate batch of cases do not command identical facilities nor they are located at equidistance from railway station or bus terminal or bus route or railway line or existing colonies, but they are far off and in a different locality. Yet, urbanization, scarcity of lands in the city, transport facility has enabled the common man to reach these villages within 30 minutes from Chennai Central or any part. The Chennai City, one of the large Metropolis has no chance to expand towards East or North and expansion could be, if at all, towards South-West and West. Therefore, there are good demands for the acquired land. The Housing Board has formed Sevvapet and Nulampur and Tiruvallur Neighbourhood Schemes. This shows the potentiality and demands for housing plots in these three villages as well.

52. Though as an agricultural land, as recorded by the land acquisition officer, per cent has been sold around Rs.300/= per cent in one or two villages, but lands cannot be treated as agricultural lands simpliciter as admittedly the lands have been divided into plots and plots have also been sold as seen from Exs.P-1 to P-17, Exs.P-1 to P-21, Exs.P-1 to P-31 and Exs.P-1 to P-20 in the respective LAOPs pertaining to the respective villages. That apart, there existed three houses in Sevvapet Village and compensation has been paid, which would show that the very acquired land was being used as a house site. But when we proceed along the channel either towards North or towards South, the distance increases from the railway station or railway line or bus stand or bus route or other facilities like regular habitation or shops or schools or other institutions. In the locality there are only housing colonies and no industries in all the four villages. The fact that just 10%

of the plots have been sold even though the lands have been laid out during the year 1980-81 and 1981-82 or thereabout would show that there is not much demand, but it is an ingenious attempt on the part of the real estate agents to layout the agricultural lands into plots either to save them from the provisions of the Tamil Nadu Urban Land (Fixation of Ceiling on Land) Act or other proceedings and also to increase the market value of the land as quickly as possible. More than 90% of the plots are lying fallow at a far of distance from railway line for more than a decade since the date of approval of the layout. This would show that there are not many takers and there is no demand at all for such plots, which lay at a distance. The demand or sale as seen from Exs.P-1 to P-21 and other connected exhibits filed in the respective batch of LAOP would show that there was every attempt to layout and dispose of the lands as house sites, but the land owners succeeded only by a few percent and not the entirety of land as they are located far off from the railway station or railway line or bus route or bus terminal or other transport facilities.

53. Hence, taking up the last of the point, fixation of market value in each village uniformly, the same cannot be countenanced at all as by such fixation the location, advantages, utilities, tharam, potentialities, demand, nearness to existing colonies or railway line or railway station or roads or bus terminus or schools are ignored and in the absence of such facilities or advantages, the land may not command such a price identical as in respect of all the plots. Each plot has got a definite advantage or a disadvantage as the case may be. Therefore, fixation of uniform rate for the acquired lands in each village is contrary to law and in particular to the pronouncement of the Supreme Court referred to supra, namely, SHAJI KURIAKOSE & ANOTHER VS. INDIAN OIL CORPORATION reported in 2001 (7) SCC 650. Hence, this point has to be answered in favour of the appellant and against the respondents.

54. We find that the learned Subordinate Judge in all the four batches of LAOPs has committed grave irregularity in considering the evidence of R.W.1 and proceeded as if the lands are to be valued uniformly as house sites by forgetting the fact that lands, which are close to the existing colonies or railway line or bus terminus, etc., commands more demand rather than lands, which is far off from such public facilities or utilities.

55. The learned counsel for the respondents contends that for lands in a particular village, uniform rate has been fixed and in fairness this Court should also fix uniform rate for all the acquired lands in each village. The learned counsel persuades this Court to fix uniform rate in each village as otherwise it may lead to unpleasant situation according to him. However, it is made clear that the acquired lands in each village as per the lay of the link channel of 20 meters width, normally they cannot be equated to each other nor same rate of market value could be fixed irrespective of their location or other advantages, which the lands command. However, Mr.Karthikeyan, learned counsel appearing for the respondents persuaded that uniform rate may be fixed for each village as this Court may deem fit. It is also equally well settled that there cannot be a uniform rate nor equality could be claimed in respect of award of compensation or fixation of market value. However, as the learned counsel for the respondents insisted that uniform rate may be fixed irrespective of the location of the particular survey field with reference to location, distance or other facilities or nearness to railway station, bus stand, main road or other connecting roads as the case may be. Hence, we will

be justified in accepting the request of the learned counsel for the respondents in this respect even though legally we may not be justified in fixing uniform rate for all the acquired lands located in each village.

56. It has been rightly pointed out that the courts below have failed to take into consideration of the nearness of the acquired land to various important public places like railway station, bus terminus, schools, temples, bazaar, hospitals, etc. This aspect has been lost sight of by the learned Subordinate Judges in all the LAOPs and that is the reason they have awarded a uniform rate. As already pointed out, no cross objections have been filed by the land owners since they were satisfied with the market value as fixed by the learned Subordinate Judge. In any acquisition of this nature and when lands run to several kilometers to a width of 20 meters, there is bound to be guess work and it could only be an approximation and cannot reflect the fair market value that could be arrived at between a willing vendor and a willing purchaser while deciding the market value sitting in their respective armchairs. But we shall not forget the fact that they are all potential house sites since they are close to the railway line or existing colonies or developed areas or bus route. There are developments, but development is not so fast, but gradual. Various housing colonies like FCI, Srimathi Nagar, etc., have come in the locality. Probably it may take a decade or thereabout for all the laid out plots being sold. But on that score it cannot be said that plots, though potential housing plots, command much demand nor it could be inferred that there was demand. All these aspects have to be taken into consideration and in the light of the above pronouncement of the Supreme Court.

57. There is considerable improvement in and around Madras city as there has been large demand for house sites. The demand is increasing day by day in respect of lands located near railway line as well as State Highway or other motorable roads. Urbanisation is at a speed. Demand for the lands by the middle class and lower middle class is also increasing day by day. In or about the time at which Section 4 (1) Notification came to be issued, there had been lot of improvements in the Tiruvallur Taluk including in these villages, such as location of satellite villages in Nulambur, Sevvapet, Tiruvallur by the Housing Board, besides various educational institutions, factories on either side of the railway tract as well as main road on the State Highway. In the circumstances, we are of the considered view that the lands do deserve to be valued appropriately as potential house sites. We also take note of the fact that there has been considerable demand even for agricultural lands.

58. We also take judicial notice of the fact that prices of agricultural lands have shoot up innumerable times. We are not inclined to offend the value fixed by the learned Subordinate Judge in all the four cases as the value has been fixed as if the lands are house sites or being house sites on the date of Section 4 (1) Notification. But in our view it is only a potential house site as 90% of the lands as deposed by R.W.1 and admitted by P.W.s also are under cultivation, though a layout has been approved 10 years prior to Section 4 (1) Notification. The lands cannot be valued as agricultural lands and also it cannot be treated as house sites, despite approval of layouts and development of housing colonies in some portion of those villages. But we will be justified in treating the lands as potential house sites and not as agricultural lands. In that view of the matter taking into consideration of all material aspects, the demand for the land, the

location, accessibility, transportation facilities, nearness to available infrastructure such as bus terminus, railway station, hospitals, schools, colleges or other educational institutions and the potentialities, which the lands command as of today as well as in the near future, we fix the market value of the acquired lands irrespective of it being a dry land or a wet land or a nanja land or a punja land as hereunder :-

a) In Re Sevvapet Village Lands : It has to be pointed out that Sevvapet lands are located near to railway line and a well served MadrasTiruvallur road, besides surrounded by various developed colonies. Even that be so, we will not be justified in affirming the market value as fixed by the Court below for Sevvapet lands, though the lands have definite potentialities, though most of them are lying fallow and without being sold even after laying out. On a consideration of the totality of the relevant factors, location, potentialities, developments, lands cannot be treated as agricultural lands, but at the same time to treat as potential house sites and we fix the market value of the acquired lands at Sevvapet Village at Rs.3,300/= (Rupees Three Thousand Three Hundred only) per cent, which works out to ten times the agricultural lands in the village ;

b) In Re Thozhur Village Lands : The learned Subordinate Judge has fixed the market value of the acquired lands at Rs.5,000/= per cent. But the acquired lands at Thozhur are away from Sevvapet and around 4 Kms., and above from the railway line and it has no rail access, but it has got a road access. But even then, it is slightly far off from the Madras-Tiruvallur road. Thozhur is a land locked village. Therefore, even assuming that the entire land is a potential house site, the fixation of market value at Rs.5,000/= per cent cannot be sustained as Exs.P-6 to P-11 are in respect of small piece of land and cannot be the basis of valuation. Taking into consideration of the location, advantage, the value of the agricultural lands as seen from the award of the land acquisition officer, this Court fix the market value of the acquired lands in Thozhur at Rs.3,000/= per cent (Rupees Three Thousand only), which works out to 15 times more than the agricultural lands, since it is a potential house site.

c) In Re Thirur Village Lands : In the matter of lands in Thirur village, it is south of Sevvapet and it is in between Sevvapet and Cooum river in the south. The data sales also do not reflect the correct market value. Exs.P-12 to P-17 also is in a different locality as it is in the east of Tiruvallur tank, while the link channel pass on the western side of Tiruvallur. The data sale deeds relied upon by the claimants cannot be relied upon. Taking into consideration of the fact that most of the lands in Tiruvallur are being under cultivation, though it is a potential house site, its location, nearness to Sevvapet railway station as well as interconnecting roads between the State Highway, namely, Tiruvallur-Madras road via Avadi and Ambattur as well as the railway track running along the border of Thirur, this Court fix the market value of the land at Thirur at s.2,800/= per cent (Rupees Two Thousand Eight Hundred only), which works out to 14 times more than what the land would fetch as an agricultural land as Thirur is land locked between Cooum and Sevvapet railway station.

d) In Re Koppur Village Lands : In respect of the acquired lands at Koppur, it is further south of Madras and Tiruvallur road via Cooum. The data sale deed relied upon, namely, Ex.P-1 is nowhere near the acquired land. Acquired lands run through Koppur reaches Nayapakkam and Koodapakkam villages to reach

Chembarambakkam lake. Koppur lands is south of Cooum and there is no evidence to show that there has been substantial improvements in the locality excepting few developments such as brick fields or industries near the Tiruvallur-Poonamallee Madras State Highway and that too only along the said road. However the lands being very near to Madras city and before Tiruvallur it has got potentialities. Taking into consideration of the location, potentialities, its location and it is being land locked between Cooum and other villages on the south, without much transportation facilities, we fix the market value of the lands at Rs.2,500/= per cent, which works out to ten times more than what the land would fetch as an agricultural land as has been fixed by the land acquisition officer.

59. In the result, the appeals are allowed in part fixing the market value of the acquired lands as below with usual solatium, interest and costs :

1) Acquired Lands at Sevvapet Village - Rs.3,300/= per cent (Rupees Three Thousand Three Hundred only) ;

2) Acquired Lands at Thozhur Village - Rs.3,000/= per cent (Rupees Three Thousand only) ;

3) Acquired Lands at Thirur Village - Rs.2,800/= per cent (Rupees Two Thousand Eight Hundred only) ; and

4) Acquired Lands at Koppur Village - Rs.2,500/= per cent (Rupees Two Thousand Five Hundred only).

Consequently, connected miscellaneous petitions are closed. The parties shall bear their respective costs in these appeals.

Index : Yes

Internet : Yes

GLN

To

1. The Subordinate Judge
Tiruvallur.

2. The Record Keeper
V.R. Section
High Court, Madras.

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